

3. Based upon the Court's Order, it appears the parties failed to make clear in their Advisory that the proposed settlement *would include a request that the Court conditionally certify the case as a class action for settlement purposes*. In other words, a significant and material part of the settlement included a provision that the parties would ask the court to certify this case as a class action for settlement purposes on the condition that, after notice to the class and applicable regulatory authorities, if the settlement is not approved by a final order of the court, then the parties would resume their positions in this litigation as if no class-wide settlement had been proposed. The case was not settled on an individual basis.

4. The procedure of requesting from the Court a conditional certification of the case as a class action for settlement purposes is common in class action settlement. See, e.g. *DeHoyos v. Allstate*, 240 F.R.D. 269 (W.D. Tex. 2007) (J. Biery); *Sleezer v. Chase Bank (USA) N.A.* SA-07-961 (J. Hudspeth) (Order Conditionally Certifying Case entered Jan. 13, 2009, Final Order and Judgment Approving Settlement entered August 6, 2009).

5. The parties are diligently working on completing: (1). a final formal settlement agreement, (2). a motion (and briefing) for conditional certification of the class, preliminary approval of the settlement and notice to the class, (3). a form of proposed notice to be mailed to class members, (4). a form of proposed order conditionally certifying the class, directing notice and setting a hearing for final approval of the settlement, and (5). a proposed final judgment and order approving the settlement. The parties are attempting to finalize these documents by the end of this week, and request a hearing soon after for consideration of the conditional certification, preliminary approval of the settlement and approval of the notice to be sent to the class members.

WHEREFORE PREMISES CONSIDERED, the parties request that the Court enter an order vacating its prior order, and instead setting a hearing to consider whether or not to grant preliminary approval to the parties proposed settlement. The parties also pray for general relief.

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